Parsons Electric Co. *and* International Brotherhood of Electrical Workers, Local 292, AFL–CIO. Case 18–CA–11463

August 27, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On March 27, 1991, Administrative Law Judge David G. Heilbrun issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The pertinent facts are as follows. The Union and the Respondent had an exclusive hiring hall arrangement through the contract negotiated between the Union and the National Electrical Contractors Association (NECA), the multiemployer association of which the Respondent is a member. On August 16, 1990, the Union referred its member, VonRuden, to the Respondent. The Respondent rejected this applicant. When the union business representative asked for a reason, the Respondent refused to give one, except to indicate that there had been ''past problems.'' The union representative then checked VonRuden's work history and discovered he was licensed and trained, had twice previously worked for the Respondent, and had served as union steward during his latter period of employment with the Respondent. Later that month, the Union again referred the applicant, who was again rejected.

The Union then sent letters to both NECA and the Respondent, respectively, grieving VonRuden's rejection and alleging that it was ''because of union involement [sic]'' and requesting information as to why the applicant was rejected. NECA responded that the Respondent had not violated the collective-bargaining agreement by rejecting VonRuden. NECA further directed the Union to cease requesting reasons for the rejection of hiring hall-referred applicants. The Respondent replied that it had no written information concerning its rejection of VonRuden.

The current collective-bargaining agreement between NECA and the Union contains article IV, which governs hiring procedure. Section 4.03 of that article gives the Employer the right to reject any hiring hall applicant for employment. That same article contains a union nondiscrimination clause (sec. 4.04) and an appeals procedure, but does not specifically make section 4.03 subject to the appeals procedure. In the most recent collective-bargaining negotiations, the Union sought unsuccessfully to eliminate section 4.03 from the contract. Another contract provision in article 3 setting forth employer and union rights, section 3.18 which is not mentioned in the judge's decision, provides that no steward shall be discriminated against by any employer because of his performance of his steward duties. The agreement also contains an arbitration clause and a management-rights clause.

The judge essentially accepted the Respondent's contention that it had the unfettered right under the parties' collective-bargaining agreement, including the management-rights clause, to reject any applicant for employment.[1] He therefore concluded that the requested information was neither necessary nor relevant under the terms of the parties' agreement. He also found that the Union had waived any right to information concerning the Respondent's reasons for rejecting an applicant by agreeing to section 4.03 of the collective-bargaining agreement. The General Counsel has excepted to the judge's findings and conclusions. We find merit in these exceptions.

As the judge noted, the law is well-settled that an employer, on request, must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). See also *Public Service Co. of Colorado*, 301 NLRB 238 (1991); *Island Creek Coal Co.*, 292 NLRB 480 (1989); and *W. B. Skinner, Inc.*, 283 NLRB 989 (1987). It is further clear that the Board uses a broad, discovery-type standard in determining relevance, and that potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *H. J. Scheirich Co.*, 300 NLRB 687 (1990); and *Pfizer*, 268 NLRB 916 (1984), enfd. 763 F.2d 887 (7th Cir. 1985). In this regard, the Board need not make a determination as to the merits of a union's claim of breach of a collective-bargaining agreement in order to determine that information related to the processing of a grievance is relevant. *Island Creek Coal*, supra; and *Postal Service*, 289 NLRB 942 (1988).

Under these principles, we find, contrary to the judge, that the requested information was relevant to the Union's grievance processing and contract administration functions. Information as to the reasons for VonRuden's rejection is clearly related to the Union's grievance over the Respondent's refusal to select VonRuden, a former union steward of the Respondent's employees, for employment. Contrary to the judge's analysis, whether the Union ultimately prevails at arbitration in proving that the Respondent's refusal to select VonRuden for employment is a violation of

[1] We note that the Respondent did not contend that its refusal to provide information was justified due to any lack of written documentation.

the nondiscrimination or other provision of the collective-bargaining agreement is not dispositive of the relevance of the information to the Union in processing the grievance. Moreover, information as to why the Respondent did not select the applicant referred out of the Union's hiring hall is relevant to the Union's general responsibility for administering the hiring hall provisions of its agreement.[2]

As to the judge's finding that the Union waived its right to the information, waiver of the Union's statutory right to relevant information must be demonstrated under a clear and unmistakable standard. E.g., *New York Telephone Co*., 299 NLRB 351 (1990). Contrary to the judge, we find no clear and unmistakable waiver demonstrated here under the terms of the parties' collective-bargaining agreement. Section 4.03 of the parties' agreement pertains to the Employer's right to reject applicants for employment but in no manner addresses the Union's right to information concerning such employment decisions. Waiver cannot be established by such contractual silence. *H. J. Scheirich*, supra. See also *Wilson & Sons Heating & Plumbing*, 302 NLRB 802 (1991).

Further, as alluded to earlier, the fact that the Respondent's right to reject applicants is not absolute is demonstrated by its agreement to section 3.18, which specifically provides that the Respondent will not discriminate against union stewards. Thus, it cannot be concluded that the parties' contract gives the Respondent the unqualified right to take action against VonRuden without regard to whether its action discriminates against the applicant because of his previous exercise of his union steward duties. Under these circumstances, it likewise cannot be concluded that the Union waived its right to information concerning the reasons the Respondent rejected VonRuden for employment, particularly in the face of a grievance allegation that the Respondent's action in refusing to employ the applicant constituted a violation of the collective-bargaining agreement.

Therefore, in light of the above, we find the Respondent's conduct in refusing to furnish the Union with the requested information violative of Section 8(a)(5) and (1) of the Act.[3]

[2] Contrary to the judge, we do not consider the contents of the instant management-rights clause to be crucial in determining the necessity or relevance of the requested information, especially in view of the agreement's sec. 3.18 specifically providing that the Respondent will not discriminate against stewards, discussed infra.

[3] We do not find that *East Dayton Tool Co*., 239 NLRB 141 (1978), cited in the judge's decision, requires a different result. That case, unlike the one at issue, involves a request for general reasons as to why an employer had not in the past hired certain broad classes of individuals, rather than as here a request for the specific reasons why the Respondent did not hire a single individual in the context of a specific grievance. Moreover as the Board noted in *East Dayton*, the employer's disclosure of the statistical data regarding its hiring practices might well have supplied the general reasons the union was seeking there.

ORDER

The National Labor Relations Board orders that the Respondent, Parsons Electric Co., Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union, International Brotherhood of Electrical Workers, Local 292, AFL–CIO by refusing to furnish it with information that it requests which is relevant and necessary to the Union's performance of its function as the exclusive bargaining representative of employees of the following appropriate unit:

> All journeymen and apprentice electricians employed at and out of its Minneapolis, Minnesota facility; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with information requested by it related to the Respondent's reasons for its nonselection of applicant VonRuden following his referral for employment by the Union pursuant to our exclusive hiring hall agreement with the Union.

(b) Post at its Minneapolis, Minnesota facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the attached notice marked ''Appendix'' for posting by the Union, if willing, in conspicuous places where notices to employees and members are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I would adopt the judge's decision and dismiss the complaint. In my view, the judge correctly concluded that this case is

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

properly decided on the basis of the contract. In 1989, the Union sought to eliminate section 4.03 in negotiating a successor agreement. That effort was unsuccessful and the clause continued unchanged in the parties' current bargaining agreement. Now the Union seeks to obtain what it was unable to achieve through collective bargaining, by using this Board to force the Respondent to acquiesce in the Union's objective. I would dismiss the complaint.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local 292, AFL–CIO by refusing to furnish the Union with information relevant and necessary to its performance of its functions as the exclusive bargaining representative in the following appropriate bargaining unit:

> All journeymen and apprentice electricians employed at and out of its Minneapolis, Minnesota facility; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information requested relating to our reasons for our nonselection of applicant VonRuden following his referral for employment by the Union pursuant to our exclusive hiring hall agreement with the Union.

PARSONS ELECTRIC CO.

Joseph H. Bornong, for the General Counsel.
David R. Hols, of Minneapolis, Minnesota, for the Respondent.
Stephen D. Gordon, of Minneapolis, Minnesota, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This case was tried at Minneapolis, Minnesota, on November 16, 1990. The charge was filed by International Brotherhood of Electrical Workers, Local 292, AFL–CIO (the Union), on September 10, 1990, and the complaint was issued October 10, 1990. The primary issue is whether Parsons Electric Co. (Respondent) unlawfully refused to furnish information to the Union necessary and relevant to its administration of a collective-bargaining agreement, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of witnesses, and after consideration of briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Minnesota corporation with an office and place of business in Minneapolis, Minnesota, where it is engaged as an electrical contractor. In the course and conduct of such business operations it annually purchases and receives at its Minneapolis facility products, goods and materials valued in excess of $50,000 directly from points outside the State of Minnesota. On these admitted facts I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, as also admitted, that the Union is a labor organization within the meaning of Section 2(5).

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Basis of Analysis*

Respondent is one of 73 employer-members of the Minneapolis Chapter, National Electrical Contractors Association (NECA). This organization maintains a collective-bargaining relationship with the Union on behalf of its constituent members, as well as those nonmember employers who assent to be contractually bound in the same way as members. The Union and NECA have been parties to a series of collective-bargaining agreements over many past years, the latest and current one of which is effective from May 1, 1989, to May 1, 1992.

The Union's highest official is currently Business Manager Dave Hannan. It operates an exclusive hiring hall pursuant to the contract with NECA, the day-to-day administration of which is handled principally by Business Representative Richard Larsen. Contract article IV sets forth this subject, heading it ''HIRING PROCEDURE'' in which numerous details as to basis of the program, eligibility of persons for registration, referral procedures, and concluding language on particular points are contained. The first three sections of article IV read as follows:

> Section 4.01. ORDERLY—EFFICIENT REFERRAL PROCEDURE—In the interest of maintaining an efficient system of production in the industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area and of eliminating discrimination in employment because of membership or non-membership in the Union, the parties hereto agree to the following system of referal [sic] of applicants for employment.
>
> Section 4.02. UNION EXCLUSIVE SOURCE OF EMPLOYEES—The Union shall be the sole and exclusive source of referral of applicants for employment.

> Section 4.03. EMPLOYER RIGHT TO REJECT—The Employer shall have the right to reject any applicant for employment.

Larsen testified that in his role of administering the hiring hall, he refers qualified applicants from one of several priority registration groups upon an employer's request. Larsen estimated that on a year-round basis the weekly number of job calls range seasonally from 35 to 125. In his experience Respondent causes about 15 percent of all referrals made, and, along with another employer of comparable size, represents a significant use of, and effect upon, the Union's hiring hall.

On August 16, 1990, member Chuck VonRuden was referred to a job call from Respondent, but was rejected for employment by its Superintendent Leslie Croswell. VonRuden complained to the Union about his rejection, and on this impetus Business Representative Jerry Westerholm, himself an occasional administrator of the hiring hall, telephoned Croswell to ascertain the reason. Croswell refused to state a reason, other than saying it was for ''past problems.'' He would not confirm that any of certain suspected reasons mentioned by Westerholm had been a factor.

Following this Westerholm made a check of hiring hall records and of VonRuden's background at the trade. He testified that VonRuden had a superior apprenticeship record, was well-licensed by the State of Minnesota, and had completed useful advanced training for his occupation. Additionally, Westerholm found that VonRuden had previously twice been referred to, and worked for, Respondent. The first occasion was in 1982 when he was still an apprentice, and the second occasion covered a period of employment during 1985–1986 when VonRuden was a journeyman electrician and served as job steward while so employed at Respondent. Satisfied that no good reason was suggested by the turndown, Westerholm again referred VonRuden on August 30 and 31, 1990, along with several other applicants on a request from Respondent for electricians. VonRuden was again rejected, although the other applicants so referred were hired.[1]

Westerholm then drafted, and Hannan signed, a pair of letters sent simultaneously on September 5 to Jeff Ohman, NECA's chapter manager, and to Donald Dolan, Respondent's owner and president. The letter to NECA constituted initiation of a formal grievance against Respondent, and specifically cited contract sections 4.01 and 4.04.[2] The actual grievance statement contained in Ohman's letter recited the dates of Respondent having rejected VonRuden, and concluded with Hannan's belief that this conduct was ''because of union involement [sic].'' The letter to Dolan advised of this grievance filing, and explicitly requested ''all memos and written documents'' in regard to VonRuden having been rejected for employment.

Both letters were promptly answered. Ohman wrote back to Hannan on September 7. In its entirety this letter read:

> This letter is in response to the grievance filed by Local 292 against Parsons Electric for alleged violations of Article IV, Sections 4.01 and 4.04, and your letter dated September 5, 1990 requesting written information relevant to the Employer's rejection of Chuck VonRuden.
>
> No written information will be provided. The Employer did not violate the Labor Agreement by rejecting him.
>
> In addition, it is the Chapter's request that you and your Business Representatives immediately cease the practice of calling the Employer and requesting reasons for rejection of applicants referred by the hiring hall.
>
> In the situation relevant to the grievance filed, you, Jerry Westerholm, and Jim Marrold contacted Les Crowell [sic] and attempted to pressure him into giving a reason for the rejections of Mr. VonRuden, in addition to a request by you to have the Employer pay Mr. VonRuden an additional twelve (12) hours pay because of the rejections.
>
> Previous activity of this same nature has been discussed by myself and Greg Shafranski with respect to his call to E.R.C. over the original rejection by that firm of Hector DeJesus.
>
> We will be prepared to discuss the grievance as filed at the Labor-Management Meeting scheduled for September 20, 1990.
>
> It was my desire to discuss this with you previously, but you were not in the office on the date of this letter, and I will be out of town the week of September 10–14th.

Dolan's reply to Hannan, dated September 13 and showing copies furnished to Ohman and a staff attorney for NLRB Region 18, stated flatly that there were no memos or written documents regarding VonRuden having been rejected. As a grievance arising from the parties' contract, the status of the matter is now that of being ''tabled.''

Larsen testified to a past referral incident involving member Ray Ranello. He recalled that in this instance Ranello's rejection for employment was explained by the contractor as being because this person generated customer complaints. Larsen also had knowledge of another problem case, arising when member Hector DeJesus was rejected by Electrical Repair & Construction (E.R.C.). In this instance Larsen's colleague, Business Representative Greg Shafranski, had also investigated the rejection, and the employer later accepted DeJesus for employment. Larsen testified that hiring hall objectives would be seriously disturbed if a major employer like Respondent was successful in punishing effective job stewards by rejecting such persons in the future.

Dolan has chaired NECA's labor-management committee for about 6 or 7 years, and served on its labor negotiating committee for an even longer time. He testified that a collective-bargaining proposal made in 1989 by the Union during renewal negotiations was that section 4.03 of article IV be deleted. He recalled that this proposal was ultimately dropped, and the section continued unchanged as from the past. Dolan had instructed Croswell, and superintendents before him, never to divulge reasons when the rare rejection of

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[1] All dates hereafter are in 1990, unless otherwise indicated.

[2] Sec. 4.04, headed ''NON-DISCRIMINATION CLAUSE,'' reads as follows:

> The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or nonmembership in the Union and such selection and referral shall not be affected in any way by rules, regulations, bylaws, constitutional provisions or requirements. All such selection and referral shall be in accord with following procedure.

a union-referred applicant occurred. He adhered to this position, believing there is no section of the contract which permits the Union to learn of any subjective basis for rejecting an applicant at a particular time.

B. *Analysis*

The issue is whether an unfair labor practice occurs from this Employer's continuing refusal to explain why VonRuden is disqualified from again becoming its employee. The General Counsel and the Union contend this is established from appropriate reasoning grounded in the essential rationale for having construction industry hiring halls. Respondent counters by arguing that it has an unfettered right to determine competence and suitability of those referred to it.

The law is clear and well settled that an employer, upon request, must provide a labor organization representing its employees with information that is relevant to ''carrying out its statutory duties and responsibilities.'' *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967). The particular focus here is whether this principle applies to the narrower question of a union seeking to process a grievance rooted in workings of its contractually established exclusive hiring hall. Plainly the hiring hall process itself is a significant function of labor organization, and a traditional subject present in this area of labor-management relations. As legitimized in *Teamsters Local v. Labor Board*, 365 U.S. 667 (1961), the exclusive hiring hall becomes a bridge between a labor organization's interest in perpetuating craft standards, and the seasonal, intermittent, and unpredictable nature of construction industry need for a competent and available pool of workers.

The General Counsel relies on *Acme Industrial*, supra, in which the court, 384 U.S. at 437–438, wrote more fully on the above-quoted passage as follows:

> . . . when it ordered the employer to furnish the requested information to the union, the Board was not making a binding construction of the labor contract. It was only acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. This discovery-type standard decided nothing about the merits of the union's contractual claims. When the respondent furnishes the requested information, it may appear that no subcontracting or work transfer has occurred, and, accordingly, that the grievances filed are without merit. . . . Thus, the assertion of jurisdiction by the Board in this case in no way threatens the power which the parties have given the arbitrator to make binding interpretations of the labor agreement.

The General Counsel contends that *Island Creek Coal Co*., 292 NLRB 480 (1989), and *W. B. Skinner, Inc*., 283 NLRB 989 (1987), also support its position. Relevance in specific terms of grievance processing is also pointed out as arguably present in *Safeway Stores*, 268 NLRB 284, 284–285 (1983), and *W-L Molding Co*., 272 NLRB 1239 (1984).

The Board in *Ohio Power Co*., 216 NLRB 987, 991 (1975), formulated the following test for evaluating the relevance of broad categories of requested information:

> Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required; but where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise. . . . The obligation is not unlimited. Thus where the information is plainly irrelevant to any dispute there is no duty to provide it.

Respondent relies initially on *East Dayton Tool & Die Co*., 239 NLRB 141 (1978), in which an employer's refusal to provide information was not found to be unlawful, even when the union asserted that unlawful discrimination against employees was taking place. Since the Union's suspicions here relate to VonRuden's past functioning as a job steward, Respondent argues that *East Dayton* is sufficient in itself to show nonrelevance of what has been requested. Further Respondent argues that on the basis of principles established in *Abbott-Northwestern Hospital*, 274 NLRB 1063 (1985), the Union here has waived its entitlement to reasons for this employer rejecting referred individuals without explanation. Finally, Respondent contends that no sufficient showing of relevance has been made out. Here *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979), is cited, where the Court wrote as follows:

> A union's bare assertion that it needs information . . . does not automatically oblige the employer to supply all the information in the manner requested. The duty to supply information under Section 8(a)(5) turns upon the ''circumstances of the particular case.''

I believe this case may be decided strictly on the basis of the contract as written and now in effect. I contrast this from an extended or liberally viewed analysis in which speculative or institutional interests of the Union might be brought into the picture. It is plain that a studied effort was made to once create, and continually maintain, the hiring hall now in place between these parties. Introductory portions of contract language are crisply stated, the priority group distinctions carefully drawn, the mechanics of referral clearly stated, and special subjects such as geographical coverage and direct hiring (''temporary employees''), appeals consideration and rights of the parties are set forth without apparent ambiguity. Special note should be made of section 4.07 giving the NECA chapter manager an express right to inspect ''referral procedure records,'' and decidedly so when this section is contrasted with the Union's unsuccessful attempt at the last negotiations to eliminate language of the employer's unrestricted right to reject.[3]

[3] This procedure of opening the system to examination by the employer association is in harmony with a recent court decision wherein an employer sought names and addresses of those individuals using the hiring hall there involved. On the basis that industry concern for competent workers was at stake, and no constitutional or other compelling interest required a contrary view, the court agreed it would be an unfair labor practice for the Union to resist such a request for information. *NLRB v. Electrical Workers IBEW Local 497*, 795 F.2d 836 (9th Cir. 1986).

Given these factors, and one not to be overlooked as section 3.03 listing ''Management Rights,'' I do not see either necessity nor relevance in the desired information.[4] The Union's entitlement to fulfill its role as collective-bargaining representative with respect to the hiring hall being a benefit to its members and the industry as a whole is without question. However, that entitlement is not unlimited. In *General Electric Co. v. NLRB*, 916 F.2d 1163 (7th Cir. 1990), the court held that an employer's general statements ''cannot be transmogrified into an explicit evocation'' triggering an obligation to turn over information desired by a union. Notably, this case was one in which a strong management-rights clause existed in the contract.

In choosing between these conflicting contentions, it is noteworthy that in a prior instance involving the parties, and potential application of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C.A. § 621, the resolution of that dispute was not done on the basis that information from the NECA employer need be revealed. This past resolution of the labor-management committee is in evidence, that of 1983 when rejection of an applicant led to a mutual declaration by the parties that age discrimination is not to be practiced. I must observe that this evidence amounts to nothing more than a gentle recognition only of what federal law does require, and for over 20 years has required. As such it provides no support for the allegation of this complaint, in which principles founded in the duty to disclose must be established. When requested information is not within the main purview of bargaining unit dynamics, as the case, illustratively, with disciplinary matters or subcontracting, a greater burden of justifying the claim of relevance is imposed. *Pfizer, Inc*., 268 NLRB 916 (1984). Cf. *Remington Arms Co*., 298 NLRB 266 (1990).

[4] The recitation of Management Rights as contained in this section includes the right of ''deciding the number and kind of Employees to properly perform the work, in hiring and laying off . . . .''

Essentially, however, it is a union's entitlement to ''*police*'' its collective-bargaining agreement that is at stake. Here it is not a matter of policing, but a matter of abstractly complaining that the labor contract is what it is and says what it says. This is not a sufficient rationale, and Respondent's obstinacy has validity beyond ''a bare claim of confidentiality or privacy.'' Cf. *Public Service Co. of Colorado*, 301 NLRB 238 (1991).

I also believe Respondent's claim of waiver has been established. The law requires that waiver of a statutory right be found only when there is ''a clear and unmistakable manifestation of an intent to waive the right.'' *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); see *New York Telephone*, 299 NLRB 351 (1990); cf. *Emery Industries*, 268 NLRB 824 (1984). In sum, I believe the matter is a pure question of contract interpretation, and, to the extent used, the resolution of grievance procedure consideration between the parties. Neither does Croswell's rather surprising truculence at shedding any light on the question affect this conclusion. While his performance as a witness may have shown some discomfort at complying with higher authority's instructions, it does not relate to the principle involved.

CONCLUSIONS OF LAW

1. Parsons Electric Co. is an employer engaged in commerce or an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 292, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Parsons Electric Co. did not commit the unfair labor practices alleged in this complaint.

[Recommended Order for dismissal omitted from publication.]